

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DAMIEN DREIS,

Plaintiff,

v.

DEARBORN NATIONAL LIFE
INSURANCE COMPANY, a foreign
corporation,

Defendant.

NO. 2:14-CV-00620-MJP

AGREED PROPOSED
INSTRUCTIONS TO THE JURY

The parties submit the following proposed jury instructions.

DATED this 19th day of August, 2015.

**Peterson | Wampold
Rosato | Luna | Knopp**

Littler Mendelson, P.C.

/s/Mallory C. Allen

/s/Michael S. Wampold

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Plaintiff	Burden of Proof	Modified from 6 Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI 165.05 (6th ed.) (Negligent Misrepresentation—Clear, Cogent, And Convincing Evidence), WPI 160.02 (Fraud—Burden of Proof), and WPI 21.01 (Meaning of Burden of Proof—Preponderance of the Evidence).	3	2
Plaintiff	Proximate Cause	WPI 15.01 (6th ed.).	4	3
Plaintiff	Negligent Misrepresentation—Affirmative Misstatement—Burden of Proof on the Issues	WPI 165.01 (modified).	5	5
Plaintiff	Fraud—Burden of Proof on the Issues	WPI 160.04.	6	8
Plaintiff	Wages	RCW 49.46.010; RCW 49.48.082(10); Barrett v. Weyerhaeuser Co. Severance Pay Plan, 40 Wn. App. 630, 633, 700 P.2d 338 (1985); Moore v. Blue Frog Mobile, Inc., 153 Wn. App. 1, 221 P.3d 913 (2009); Durand v. HIMC Corp., 151 Wn. App. 818, 833, 214 P.3d 189 (2009).	7	9

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1 **Instruction No. 3**

2 Proximate Cause

3 The term “proximate cause” means a cause which in a direct sequence produces the
4 injury complained of and without which such injury would not have happened.

5 There may be more than one proximate cause of an injury.
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WPI 15.01 (6th ed.).

1 **Instruction No. 5**

2 Negligent Misrepresentation—Affirmative Misstatement—Burden of Proof on the Issues

3 Plaintiff has the burden of proving by clear, cogent, and convincing evidence each of the
4 following elements for the claim of negligent misrepresentation by affirmative misstatement:

5 (1) that Dearborn National supplied information for the guidance of others in their
6 business transactions that was false;

7 (2) that Dearborn National knew or should have known that the information was supplied
8 to guide Mr. Dreis in business transactions;

9 (3) that Dearborn National was negligent in obtaining or communicating the false
10 information;

11 (4) that Mr. Dreis relied on the false information;

12 (5) that Mr. Dreis's reliance on the false information was reasonable; and

13 (6) that the false information proximately caused damages to Mr. Dreis.

14 If you find from your consideration of all the evidence that each of these elements has
15 been proved, your verdict should be for Mr. Dreis on this claim. On the other hand, if any of
16 these elements has not been proved, your verdict should be for Dearborn National on this claim.

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26 WPI 165.01 (modified).

1 **Instruction No. 8**

2 Fraud—Burden of Proof on the Issues

3 Plaintiff has the burden of proving by clear, cogent, and convincing evidence each of the
4 following elements on his claim of fraud:

- 5 (1) that Dearborn National made a representation of existing fact;
- 6 (2) that the fact represented was material;
- 7 (3) that the representation was false;
- 8 (4) that Dearborn National knew the representation was false;
- 9 (5) that Mr. Dreis did not know that the representation was false;
- 10 (6) that Dearborn National intended that Mr. Dreis would act upon the representation;
- 11 (7) that Mr. Dreis had a right to rely on the truth of the representation;
- 12 (8) that Mr. Dreis did rely on the truth of the representation; and
- 13 (9) that Mr. Dreis was damaged by reliance on the representation.

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15 If you find from your consideration of all the evidence that each of these elements has
16 been proved, your verdict should be for Mr. Dreis on this claim. On the other hand, if any of
17 these elements has not been proved, your verdict should be for Dearborn National on this claim.

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WPI 160.04.

1 **Instruction No. 9**

2 Wages

3 “Wages” includes any compensation owed to an employee on account of his
4 employment. Severance payments are a form of wages.

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24 RCW 49.46.010; RCW 49.48.082(10); *Barrett v. Weyerhaeuser Co. Severance Pay Plan*, 40 Wn.
25 App. 630, 633, 700 P.2d 338 (1985); *Moore v. Blue Frog Mobile, Inc.*, 153 Wn. App. 1, 221 P.3d
26 913 (2009) (applying RCW 49.52 to withheld severance payments); *Durand v. HPMC Corp.*, 151
Wn. App. 818, 833, 214 P.3d 189 (2009) (upholding wrongful withholding of wages claim based
on unpaid severance).

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the date shown below I electronically filed the foregoing
3 document with the Clerk of the Court using the CM/ECF system which will send notification of
4 such filing to all counsel of record.

5 **Dated:** August 19, 2015

6 **PETERSON | WAMPOLD**
7 **ROSATO | LUNA | KNOPP**

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